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In the Supreme Court of the United States

OCTOBER TERM, 1978

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 13, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-6) is reported at 581 F. 2d 1321. The decision and order of the National Labor Relations Board (Pet. App. B-1 to B-25) are reported at 228 N.L.R.B. 1383.

JURISDICTION

The judgment of the court of appeals (Pet. App. D-1 to D-8) was entered on October 16, 1978. The petition for a writ of certiorari was filed on December 16, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Board properly found that the union violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 29 U.S.C. 158(b)(1)(A) and 158(b)(2), by refusing to dispatch a member for work because of his late payment of union fines and assessments.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, are set forth at Pet. 2-3.

STATEMENT

Petitioner ("the Union") and the Pacific Maritime Association (PMA), at all relevant times, were parties to a collective bargaining agreement which required that PMA employees be dispatched through a hiring hall administered jointly by the Union and PMA. The agreement contained no provision requiring membership in the Union and barred discrimination between members and non-members in dispatching so long as non-members paid the "pro rata share of the expenses related to the dispatching hall, the Labor Relations Committee, etc." (Pet. App. B-6 to B-7).

On Thursday, January 15, 1976, longstanding Union member Larry Sullivan attempted to pay his monthly dues to the Union; after that date the payment would be past-due (Pet. App. B-7). Although the amount tendered by Sullivan was sufficient to cover his dues (as well as the pro-rata share that would have been required had he not been a member of the Union), it was not enough to cover all outstanding fines and assessments (Pet. App. B-7 to B-8). Accordingly, the Union would not accept his dues.[1]

[1]The Union's internal rules required that "All fines, assessments or other indebtedness" to the Union be paid by members before their monthly dues would be accepted (Pet. App. B-7).

On Sunday, January 18, Sullivan went to the dispatch hall and was sent to a job that evening. Union Business Representative Paul Loveridge approached Sullivan on the job and, having discovered that Sullivan had not paid the monies owed the Union, insisted that Sullivan call a replacement. Sullivan refused, noting that he had tried to pay part of what he owed (Pet. App. B-8 to B-9). The next day, Monday, January 19, Loveridge filed an internal Union complaint against Sullivan for his refusal to call a replacement (Pet. App. B-9).[2]

Pursuant to internal Union proceedings, it was determined that Sullivan had violated Union rules. As punishment, he was barred from use of the dispatch hall for ten days, thus effectively suspending him from work for any PMA employer (Pet. App. B-9). During these proceedings, Sullivan was reminded that he had the option of dropping his Union membership and converting to "non-member, pro rata" status, thereby avoiding suspension of his dispatch hall rights (Pet. 5; Pet. App. B-10). Sullivan rejected this option (Pet. App. B-10).[3]

2. The Board, adopting the decision of its administrative law judge, concluded that (Pet. App. B-15 to B-16) "by refusing to dispatch Larry Sullivan for work for employer-members of PMA for reasons other than his failure to tender dues, which included his share of the expenses of the dispatching hall, [the Union] violated

[2]The same day Sullivan offered, and the Union accepted, the full amount owed to the Union (Pet. App. B-8).

[3]While Sullivan's case was being processed by the Union, the Union issued a notice to its membership concerning dues collection, including a recitation of the Union's rule regarding payments of fines and assessments (note 1, *supra*), and a statement that "the Officers have instructed the girls in the dues office that if payments are not made on Caucus and Convention assessments and fines, dues will not be accepted and you *WILL NOT BE ALLOWED TO WORK*" (Pet. App. B-12; emphasis in original).

Section 8(b)(1)(A) and (2) of the Act."[4] The Board explained that "[i]ntegral to the policy underlying both Sections was the intent to separate membership obligations owed by employees to their labor organizations from the employment rights of those employees" (Pet. App. B-12 to B-13), citing *Radio Officers' Union* v. *NLRB*, 347 U.S. 17, 40 (1954), and *Scofield* v. *NLRB*, 394 U.S. 423, 428-429 (1969). Consequently, while a labor organization is free, under the proviso to Section 8(b)(1)(A), "to prescribe its own rules with respect to the acquisition or retention of membership therein," its ability to enforce such rules is restricted by " 'barring enforcement of a union's internal regulations to affect a member's employment status' " (Pet. App. B-13), citing *NLRB* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175, 195 (1967).

The Board rejected the Union's claim that its imposition of the penalty was proper since Sullivan could have avoided suspension of his work opportunities by resigning from the Union. The Board pointed out that external, or job-related sanctions, as contrasted with internal union sanctions, may not be applied against union members, no less than non-members (Pet. App. B-17). The Board entered an appropriate remedial order (Pet. App. B-23 to B-25).

3. The court of appeals sustained the Board's findings and conclusions, and enforced its order. The court agreed that unions may not enforce their internal regulations (in matters other than payment of dues and initiation fees) " 'to affect a member's employment status,' " and that the Union's action here did, in fact, "deprive Sullivan of

[4]The Board also found that "by threatening to and by instituting discipline against Sullivan for refusing to voluntarily remove himself from his job for reasons other than his failure to tender dues * * * [the Union] violated Section 8(b)(1)(A) of the Act" (Pet. App. B-16).

work" (Pet. App. A-5). The court also agreed that there was no merit to the Union's contention that Sullivan had the "option" of resigning from the Union: "To present a union member with the Hobson's choice between surrender of his membership or temporary loss of employment cannot be characterized fairly as action not 'affecting an individual's employment status.' It is sophistry to insist otherwise" (Pet. App. A-6).

ARGUMENT

Nearly 25 years ago, in *Radio Officers' Union* v. *NLRB*, *supra*, 347 U.S. at 40 (footnotes omitted), this Court recognized that:

> The policy of the Act is to insulate employees' jobs from their organizational rights. Thus §§8(a) (3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood. The only limitation Congress has chosen to impose on this right is specified in the proviso to §8(a)(3) which authorizes employers to enter into certain union security contracts, but prohibits discharge under such contracts if * * * "membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

Since that time it has been settled that, while unions are entitled to discipline their members for violating internal union rules, they may not do so by means of depriving members of the opportunity to work, so long as such members tender their dues in accordance with Sections 8(a)(3) and 8(b)(2). *NLRB* v. *Allis-Chalmers Manufacturing Co.*, *supra; Scofield* v. *NLRB*, *supra*; and *NLRB* v. *Boeing Co.*, 412 U.S. 67, 73-74 (1973). Thus, the court of appeals correctly noted (Pet. App. A-4 to A-5) that in

Boeing this Court reaffirmed " 'that Congress intended to distinguish between the external internal enforcement of union rules, and [that] therefore the Board [has the] authority to pass on those rules affecting an individual's employment status but not on his union membership status.' "

In the instant case it is undisputed that Sullivan did make a timely tender of the dues required under the Union-PMA contract to entitle him to use the dispatch hall. The Union's "external" penalty—barring him from using the dispatch hall for ten days for failure to make timely tender of other sums (fines and assessments) required by the Union—clearly deprived him of work for a reason other than that permitted by the Act, and therefore violated Sections 8(b)(1)(A) and 8(b)(2).

The Union (Pet. 7-8) seeks to avoid the application of these settled principles by contending that, because Sullivan had the option of resigning from the Union rather than accept the penalty, its disciplinary action was permissible. There is no merit to that contention. The apparent premise of the Union's argument is that job-related discipline may be meted out to union members so long as they have the "escape hatch" of resignation. *Scofield* does not assist petitioner. There, the Court upheld the union-imposed internal sanctions of fines and suspension from membership, noting that the member could escape such union discipline by resigning. 394 U.S. at 430. However, the Court made clear that legitimate union rules could not be enforced against any individual by "use [of] the emoluments of the job to enforce the union's rules." *Id.* at 429.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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